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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. MBHB00-556-A)

In the Application of:

Kevin J. Zwaert et al.

Serial No. 09/928,251

Filed: August 10, 2001

Title: Liquid Applicator

Art Unit: 1734

Examiner: David Walczak

**SUPPLEMENTAL REPLY TO THE
SEPTEMBER 26, 2002 RESTRICTION REQUIREMENT**

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Asst. Commissioner of Patents
Washington, D.C. 20231

Dear Sir:

On December 5, 2002, the Examiner issued a communication indicating that he believed Applicant's 10/30/2002 Restriction response was insufficient. This is a Supplemental Reply to the September 26, 2002 Restriction Requirement for the above-captioned case.

In the Restriction Requirement, the Examiner requires election of one of two inventions as well as the provisional election of 1 of 4 species of the invention. Both of the Examiner's requirements are hereby traversed on grounds set forth below.

I. The Requirement To Elect Claims Of One Of Two Inventions

The Examiner's requirement that the claimed invention be restricted to one of two inventions is improper because all claims, both apparatus and method, include similar apparatus limitations. For Example, claim 18 is directed, in part to:

18. A method for applying a liquid to a surface using a liquid applicator including a resilient bottle adapted to hold a liquid having an opening; a pin including a body forming a first opening and a second opening wherein the pin body at least partially surrounds the resilient bottle and wherein the resilient bottle opening is concentric to the pin second opening; a cap including a first open end, a second open end, wherein the pin first open end is united with cap first open end and wherein the pin second open end is concentric to the cap second open end; and an applicator holder comprising the steps of;

Since method claims 18-25 include apparatus limitations found in the apparatus claims, claims 18-25 are not independent and distinct from apparatus claims 1-17 and 26-41. For this reason, the Examiner's restriction requirement should be withdrawn.

II. The Requirement To Elect One Of Four Species From The Application Figures

The Examiners requirement that the Applicant's elect a single species as set forth is the

806.04c various application figures is traversed and should be withdrawn for several reasons. First, it is the claims and not the figures that define the applicant's invention. Therefore, the requirement that the Applicants elect a species from the figures is improper.

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Secondly, while the application claims might define different species, all of the species share the elements of claim 1 in common. Claims are to be restricted to different species only when the species are "mutually exclusive." (See MPEP §806.04(f)). Since claim 1 et al. does not recite characteristics that are mutually exclusive from claim 18-25, the test for "different species" is not met. As a result, the species are not independent and the requirement that the Applicant's elect a single species from the application figures should be withdrawn for this reason.

III. The Provisional Election

If one or both of the Examiner's Restriction Requirement is not traversed above, then the Applicant's elect:

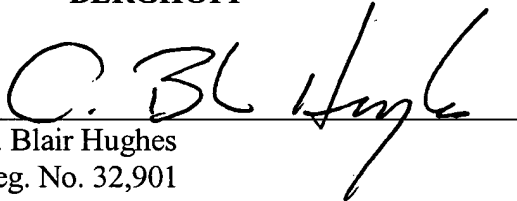
1. To proceed with the examination of the invention I, claims 1-17 and 26-41.
2. The species of Figures 1-5 which are encompassed by application claims 1-25.

Respectfully submitted,

**McDONNELL BOEHNEN HULBERT &
BERGHOFF**

Dated: January 3, 2003

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